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EXAMINER	
VERBITSKY, GAIL KAPLAN	
ART UNIT	**PAPER NUMBER**
2859	

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Please find below and/or attached an Office communication concerning this application or proceeding.

H·A

Office Action Summary	Application No.	Applicant(s)	
	10/701,050	MCCONNELL ET AL.	
	Examiner	Art Unit	
	Gail Verbitsky	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 5-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 5-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: it appears that the limitations stating that "an aperture defining an outer perimeter", as stated in claim 26, and "the temperature displaying member engages the aperture outer perimeter" as stated in claim 27 have not been described in the specification.

Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "aperture defining an outer perimeter", as stated in claim 26, and the "temperature displaying member engages the aperture outer perimeter" as stated in claim 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 2-13, 15-20, 22-25, 27 are finally objected to because of the following informalities: "Claim" in line 1 of each claim should be replaced with –claim—because only the very first letter of the claim can be capitalized. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 26-27 is finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, the limitations stating that "an aperture defining an outer perimeter", as stated in claim 26, and "the temperature displaying member engages the

aperture outer perimeter" as stated in claim 27 have not been described in the specification.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 21-27 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Bloch (U.S. 4747413).

Bloch discloses in Figs. 1-3 a body temperature device having a temperature measuring device 18 and a temperature displaying member 20, the temperature measuring device 18 is adjacent to a body of a mammal (baby) for measuring its temperature. The temperature measuring device 18 is in communicating with the temperature displaying member 20 for receiving and indicating temperature of the baby by indicating a visual indicia representative of the baby's temperature. The device also comprising a garment/ clothing worn by the baby, the clothing has an aperture (hole) provided in the torso of the clothing to directly couple (to receive only) the temperature measuring device 18 to the baby's armpit (col. 3, lines 42-68). The temperature-displaying member is removably retained in a clear plastic pocket 24.

For claims 22-24: there is a flexible conductor/ lead/ wire/ rod 22 to communicate the temperature-measuring device 18 to the display 20.

For claim 25: as shown in Fig. 2, the conductor/ wire/ lead 122 is connected to the display device 120, the display device 120 is snapped by means of snap fasteners 124-125 to the garment, thus, the conductor is snapped to the garments along with the display device 120.

For claims 26-27 (as best understood by the Examiner): the clothing has a plastic pocket 24 attached to the clothing; the pocket 24 has an aperture. When opened, the aperture is, inherently, defined by a perimeter, wherein the display 22 is inserted.

8. Claim 14 is finally rejected under 35 U.S.C. 102(b) as being anticipated by McKenzie et al. (U.S. 5802611) [hereinafter McKenzie].

McKenzie discloses in Figs. 4-5 a device comprising a clothing body sized and configured to accommodate a body of a patient (mammal). The device also comprising a thermometer 11 adjacently disposed to the patient's body and received/ retained in an aperture 10 for measuring temperature of the patient (col. 1, lines 64-67 and col. 2, lines 1-3). The thermometer 11 comprising a display member 14 being in communication and fixedly stacked upon a projection 12 to which a temperature measuring/ sensing means (temperature measuring member) attached and received in the aperture 10 and, inherently, in contact with the skin of the patient by means of said projection 12 contacting the skin of the patient and protruding through the aperture (entire col. 3 and col. 4, line 42). As shown in Fig. 5, the display member 14 is fixedly stacked upon the member 12 and visually indicates the temperature of the patient.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-3, 5-6, 10-18 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Liu (U.S. 6641544).

Liu discloses in Figs. 2, 4-5 a device for measuring and displaying body temperature, the device attached to clothing, thus, making the clothing temperature-indicating clothing. The clothing is sized and configured to accommodate a baby mammalian, the clothing, inherently, has an inner and outer sides/ surfaces.
The body temperature-measuring device engaged (fasten) on a piece of the clothing 90 (col. 2, lines 45-46). There is a temperature measuring member 30 for measuring temperature of the body disposed in contact with the body and in communication with a temperature displaying member 70 for receiving temperature from temperature measuring member and displaying it numerical value on the outside surface, so as to make it visible to an operator. As shown in Fig. 5, the clothing is a sleepwear/ sleeping garment or a pajama.

For claim 5: as shown in Fig. 5, the temperature is taken when the baby is awake.

For claim 6: there is a flexible cable 33 communicates said members, the cable is on the reel which makes the cable extendable/ retractable.

For claims 10-11: as shown in Fig. 5, the temperature measuring member 30 has a temperature measuring surface (contact pad/ conductive body) 32 sized and configured to contact the baby's body underneath the inner surface of the clothing for measuring the temperature of the baby.

For claims 13-14: the temperature displaying member is sized and configured to extend from the temperature measuring member 32 by means of the cable and to expose the display 70 on the outside surface of the clothing, as shown in Fig. 5. This would imply, that, depending on the positioning of the baby and the operator relative to the baby, the operator could fasten the displaying member directly on top (stack upon) of the temperature-measuring member, i.e., on left side of the outer surface.

For claim 15: the electrical cable 33 is an electrical rod/ wire.

For claim 16: the temperature-measuring member, as shown in Fig. 5, is of a generally circular shape/ configuration.

For claim 17: the displaying member, as shown in Fig. 2, is of a generally circular

Liu does not explicitly teach that the sleeping garment is a sleeping sack, as stated in claim 1, and that the conductive material is aluminum, as stated in claim 12.

With respect to claim 1: making the baby clothing the particular clothing, i.e., a sleep sack or a daywear, as stated in claim 1, absent any criticality, is only considered to the "preferred" or "optimum" clothing that the [person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, on the particular time when the temperature is to be taken, etc. See in re Borsch, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the temperature-measuring device attachable to any kind of clothing wearable by a baby, so as to allow the operator to take temperature measurement independent on the particular clothing on the baby.

With respect to claim 12: making the conductive material of aluminum, absent any criticality, is only considered to be the "optimum" material that a person having

ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide for the conductive material, disclosed by Liu, since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention. In re Lashin, 125 USPQ 416.

11. Claims 7-8 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Sackner et al. (U.S. 6551252) [hereinafter Sackner].

Liu discloses the device as stated above in paragraph 10.

Liu does not explicitly teach the limitations of claims 7-8.

Sackner discloses the device/ clothing in the field of applicant's endeavor, the clothing comprising a pocket wherein a hand held display device connected to a sensor, can be placed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Liu so as to have a pocket for positioning the display, as taught by Sackner, in order to avoid fastening device and to allow the operator to quickly remove the display from the clothing if there is a need to do so.

12. Claim 9 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Liu and Sackner as applied to claims 7-8 above, and further in view of Mohrman (U.S. 4121462).

Liu and Sackner disclose the device as stated above in paragraph 11.

Liu and Sackner do not explicitly teach the limitations of claim 9.

Mohrman discloses a device in the field of applicant's endeavor, the device comprising a probe 3 to sense temperature, a pocket sized/ hand held unit 47 having a display, wherein the display has a scale providing a numerical visual indication of an illuminated selected temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the sensor, disclosed by Liu and Sackner, with the probe, as taught by Mohrman, because both of them are alternate types of temperature measuring members which will perform the same function of sensing the temperature of the body, if one is replaced with the other.

13. Claims 18, 20 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Mohrman.

Liu discloses the device as stated above in paragraph 10.

Liu does not explicitly teach the limitations of claims 18 and 20.

Mohrman discloses a device in the field of applicant's endeavor, the device comprising a probe 3 to sense temperature, a pocket sized/ hand held unit 47 having a display, wherein the display has a scale providing a numerical visual indication of an illuminated selected temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to illuminate only the selected temperature indication, as taught by Mohrman, in order to provide a better visual information and thus, improve accuracy of the device.

14. Claim 19 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Liu In view of Ronci (U.S. 20020097777).

Liu discloses the device as stated above in paragraph 10.

Liu does not explicitly teach the limitations of claim 19.

Ronci teaches that different/ selected temperature value can correspond to different colors of measured temperature and indicated on a display.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to illuminate selected color corresponding to measured temperature, as taught by Ronci, in order to provide a better visual information and thus, improve accuracy of the device.

15. Claims 1-2, 5-11, 13, 17-18 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Bloch (U.S. 4747413).

Bloch discloses in Figs. 1-3 a body temperature device comprising a baby garment/ clothing defining an inner surface and an outer surface and having a temperature measuring device 18 and a temperature displaying member 20, the temperature measuring device 18 is adjacent to a body of a mammal (baby) for measuring its temperature. The temperature measuring device 18 is in communicating with the temperature displaying member 20 for receiving and indicating temperature of the baby by indicating a visual indicia representative of the baby's temperature. The clothing has an aperture (hole) provided in the torso of the clothing to directly couple (to

receive only) the temperature-measuring device 18 to the baby's armpit (col. 3, lines 42-68). The temperature-displaying member is removably retained in a clear plastic pocket 24.

There is a flexible conductor/ lead/ wire/ rod 22 to communicate the temperature-measuring device 18 to the display 20.

As shown in Fig. 2, the conductor/ wire/ lead 122 is connected to the display device 120, the display device 120 is snapped by means of snap fasteners 124-125 to the garment, thus, the conductor is snapped to the garments along with the display device 120.

With respect to claim 1: making the baby clothing the particular clothing, i.e., a sleep sack or a daywear, as stated in claim 1, absent any criticality, is only considered to the "preferred" or "optimum" clothing that the [person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, on the particular time when the temperature is to be taken, etc. See in re Boesch, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the temperature-measuring device attachable to any kind of clothing wearable by a baby, so as to allow the operator to take temperature measurement independent on the particular clothing on the baby.

Response to Arguments

16. Applicant's arguments filed on November 11, 2004 have been fully considered but they are not persuasive. Applicant states that Liu does not teach a sleep sack. Applicant argues with the Examiner using a case decision (In re Boesch) to reject claim 4 for the limitation of a sleep sack. Liu suggest using a temperature sensing and indicating device with a baby sleep wear. Liu does not explicitly state that the sleepwear could be a sleep sack. However, applicant neither shows no criticality of using a sleep

sack over any other baby' sleep wear/ garment (page 12, lines 12-24), nor provides any particular description of the sleep sack being claimed. Therefore, A) the Examiners use of In re Boesch is considered to be appropriate in this case, B) the Examiner considers that any clothing that could be worn by a sleeping a baby is a sleep sack.

Applicant argues that the device of Liu is not compatible with a sleeping sack. This argument is not persuasive because the only difference between the garment shown by Liu in Fig. 3 of Liu and the sleep sack 10 shown by the Applicant in Fig. 1 of the instant application is that in the sleep sack the feet of the baby would be covered. Therefore, it appears that the operation of the device is considered to be as claimed by applicant.

For claim 14: applicant states that Liu does not teach that the display device is fixedly stacked upon the temperature-sensing member. Applicant states that Liu disclose randomly stacked temperature-displaying member upon the temperature-displaying member. The limitation stating "fixedly stacked" is a newly added limitation. Therefore, this argument is now moot in view of the new ground of rejection of claim 14 necessitated by the present amendment.

Applicant states that Liu does not teach a rigid rod. This argument is not persuasive because this limitation (rigid rod) is not stated in claim 15 and 24. It is the claims that define the claimed invention, and it is claims, not specification that are anticipated or unpatentable. Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1064.

With respect to claim 21: see paragraph 7 of the present Office action.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800

January 11, 2005